IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 169 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

ONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? No.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
S P GAJJAR FAMILY TRUST - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 27/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The Income-Tax Appellate Tribunal, Ahmedabad Bench-”A” has referred the following question for the opinion of this Court us/ 256(1) of the Income-Tax Act,

1961 :

> “Whether the Appellate Tribunal is right in law and on facts in holding that the assessee trust deserved to be assessed as specific trust ?”

2. The assessee is a private family trust. It came into existence by execution of the trust deed dated September 17, 1981. At the relevant time, in all, there were 13 beneficiaries out of which 5 were major. The individual shares of the beneficiaries were specified therein.

3. Clause (2 (b) of the Deed of Settlement of the trust reads as under :

> “Provided that in case any of the beneficiaries is not alive at the time of distributing the income for any year, the share income pertaining to the deceased shall be distributed amongst the other surviving beneficiaries, as the case may be, in equal proportion. If all the beneficiaries are not alive at the date of distribution of income, the income shall be allocable to their heirs at law as on intestacy.”

4. For the assessment year 1984-85 the assessee filed the return and claimed that it was a specific trust. However, the Assessing Officer held that it was not possible on the date of execution of the trust deed to

identify the number of beneficiaries or to ascertain their shares, at the end of each previous year on account of death or deaths of beneficiaries and as the income of the trust was not specifically receivable on behalf of or for the benefit of the beneficiaries and as the individual shares of the beneficiaries on whose behalf or for whose benefit such income or part thereof was receivable were indeterminate or unknown within the mearing of explanation (1) to Section 164 of the Act, the income of the trust was liable to be taxed on maximum marginal rate as provided under Section 184 of the Income-Tax Act, 1961.

5. In appeal, CIT (Appeals) confirmed the view of the Assessing Officer. However, the Tribunal noticed that in Clause 2 (b) of the deed of settlement of trust dated September 17, 1981, thirteen beneficiaries were mentioned and as the beneficiaries as well as their respective shares were specified, the trust which was specific did not become discretionary in nature, giving rise to the instant refernce.

6. Though the assessee is duly served, it has neither appeared through its constituted agent nor through an advocate.

7. This Court has heard Mrs. Mona M. Bhatt, learned advocate for the revenue at length and in great detail and also considered the facts of the case.

8. The question whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust deserved to be assessed as a specific trust will have to be answered in the light of proviso to Clause 2(b) of the trust deed which is quoted above. A bare reading of the deed of settlement of trust makes it clear that there were in all 13 beneficiaries and it provided that net balance of income remaining after providing for contingencies mentioned in the trust deed should be distributed amongst the beneficiaries at the close of every accounting year in the proportions mentioned against their names. Thus, there is no manner of doubt that the shares of the beneficiaries are specified in the trust deed. Further, proviso to Clause 2(b), inter-alia, provides that in case any of the beneficiaries is not alive at the time of distributing of the income for any year, the share of income pertaining to the deceased shall be distributed amongst other surviving beneficiaries, as the case may be, in equal proportion. Thus, the distribution of income for any year on death of any of the beneficiaries is also specified and it is provided that the share of income pertaining to the deceased beneficiaries shall be distributed amongst surviving beneficiaries in equal proportion. This part of the proviso is very specific and does not confer any discretion on the trustees as to how the income of the beneficiary, who has died should be distributed amongst the surviving beneficiaries. As far as the second part of the proviso is concerned, it is provided that if all the beneficiaries are not alive on the date of distribution of the income, the income shall be

allocable to their heirs as per the law of intestate succession. The law of intestate succession also specifies the share of heirs , and therefore, the second part of the proviso also cannot be regarded as vesting discretion in the trustees as to how and in which proportion the income of the beneficiaries should be distributed if all of them died.

9. In Commissioner of Income-Tax Vs. Gulabchand Mehtab Bai Kasliwal Family Trust, 254 ITR 336, a trust deed specified that on the intestate death of a beneficiary her share was to be allocated to her heirs whatsoever their number and whatsoever their proportion of share in her estate. On construction of the said clause of deed, it is held that the share given to the beneficiary had, on her death, to be distributed amongst her heirs according to the personal law of the deceased and merely because one of the known beneficiaries, whose share was specified died and such beneficiary's interest devolved on the deceased's heir or heirs, the specified trust did not become a trust in which the shares of the beneficiaries were indeterminate or known. On interpretation of the proviso to Clause 2(b) of the trust deed, this Court is of the opinion that it is not left to the entire discretion of the trustees to distribute amongst the beneficiaries the net income of the trust in such proportions on death of a beneficiary or deaths of all the beneficiaries. Therefore, the Tribunal was justified in treating the assessee as a specific trust. Accordingly, the question referred to this Court for its opinion is answered in the affirmative i.e. against the revenue and in favour of the assessee.

The Reference, accordingly, stands disposed of. There shall be no order as to costs.

(J.M. Panchal, J.)

(Bankim N. Mehta, J.)

/JVSatwara/